

ENVIRONMENTAL QUALITY

CHAPTER 24

RECLAMATION

Sub-Chapter 2

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Sub-Chapter 2

Rules and Regulations Governing
the Opencut Mining Act

17.24.201 APPLICABILITY (1) This subchapter applies to opencut operations as provided in the Opencut Mining Act (Title 82, chapter 4, part 4, MCA, hereinafter referred to as "the Act").

(2) An operator conducting a sand, gravel, bentonite, clay, or scoria mining operation pursuant to the provisions of a reclamation contract issued under the Montana Opencut or Strip Mined Land Reclamation Act of 1971 is recognized as being in compliance with Montana law. However, should that operator begin a new opencut operation as defined in 82-4-431, MCA, or expand an opencut operation beyond the existing contract area, the operator shall be responsible for first obtaining a permit under the provisions of the Act as amended.

(3) Contracts and permits in effect on February 13, 2004, need not be amended to comply with rules and rule amendments adopted on February 13, 2004. Applications for permits, permit amendments, and permit transfers that were submitted prior to February 13, 2004, remain subject to provisions of this subchapter relating to application requirements as they read on the date the application was submitted. (History: 82-4-422, MCA; IMP, 82-4-431, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.202 DEFINITIONS When used in this subchapter, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Access road" means an existing or proposed non-public road used in connection with opencut operations. The term includes the roadbed, cut and fill slopes, ditches, and other structures and disturbances related to access road establishment, use, and reclamation.

(2) "Department" means the department of environmental quality provided for in Title 2, chapter 15, part 35, MCA;

(3) "Facility-level area" means access roads and areas where parking, equipment and material storage, soil and overburden stockpiling, fuel storage, mine material processing and stockpiling, other product production and storage, and water system and control structures are situated.

(4) "Main permit area" means facility-level areas and mine-level areas, except access roads.

(5) "Mine-level area" means areas where excavating, grading, and excess overburden and fines disposal occur.

(6) "Mine material" means sand, gravel, scoria, bentonite, clay, soil, and peat.

(7) "Opencut operation" means the areas and activities related to opencut mine site preparation, access road use, mine material mining and processing, and reclamation.

(8) "Overburden" means the material below the soil and above the mine material.

(9) "Soil" means the dark or root-bearing surface material, which is typically the O, A, E, and B horizons in soil profile descriptions. (History: 82-4-422, MCA; IMP, 82-4-403, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.203 BOND OR OTHER SECURITY (1) An application for a permit must be accompanied by a bond or other security acceptable to the department under 82-4-433, MCA, of at least \$200 for each acre of affected land as defined in 82-4-403, MCA. After the department has evaluated the site it may require an increase in the amount of bond or other security in accordance with 82-4-433, MCA.

(2) The department may adjust the bond or other security levels yearly. Should the department determine that additional bond or other security is required, the operator shall submit it within 30 days of notification by the department.

(3) If the bond or other security is canceled or otherwise becomes ineffective, the operator shall reinstate it or replace it with another bond or other security acceptable to the department under 82-4-433, MCA, within 30 days of notification by the department of the cancellation. Upon failure of the operator to reinstate or replace such bond or other security within that time, the department may suspend the permit(s) secured by such bond or other security until its reinstatement or replacement. The operator shall immediately cease opencut operations, except reclamation activities, on lands covered by a suspended permit.

(4) Requests for full or partial release of bond or other security must be submitted on forms provided by the department. (History: 82-4-422, MCA; IMP, 82-4-432, 82-4-433, MCA; NEW, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.204 SITE INFORMATION IS REPEALED (History: 82-4-422, MCA; IMP, 82-4-432, 82-4-434, MCA; NEW, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; REP, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.205 MINING AND RECLAMATION PLAN IS REPEALED
(History: 82-4-422, MCA; IMP, 82-4-432, 82-4-434, MCA; NEW, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; REP, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.206 LANDOWNER CONSENT FOR RECLAMATION (1) An operator shall secure the consent of the owner of the land to be affected by opencut operations to allow the operator, the department, or agents or contractors of the department to enter and reclaim the affected land as provided in the plan of operation. The landowner consent must be submitted on a form provided by the department. No application for a permit, or an amendment to add acreage or change the postmining land use, may be approved unless accompanied by a landowner consent form. (History: 82-4-422, MCA; IMP, 82-4-422, 82-4-423, 82-4-432, 82-4-434, MCA; NEW, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.207 ADDITIONAL REQUIREMENTS FOR BENTONITE MINES

(1) In addition to the requirements imposed by ARM 17.24.203, 17.24.206, and 17.24.216 through 17.24.222, the department may require the following information as part of the plan of operation for a bentonite mining operation:

(a) an analysis of the soil and each major stratum in the overburden, including determinations of saturation percentage, pH, electrical conductivity, sodium adsorption ratio, texture, and additional characteristics the department may require.

(i) In submitting this information, the operator shall also list:

- (A) the number of samples taken;
- (B) the methods by which they were taken;
- (C) the location and depths from which they were taken;
- (D) the names and addresses of the persons who took the samples;
- (E) the methods of analysis; and
- (F) the names and addresses of the persons who analyzed the samples.

(ii) The soil analysis must be accompanied by a map delineating:

- (A) the soil types;
- (B) sample site locations;
- (C) thicknesses of soil and overburden to be stripped for each soil type; and
- (D) the dominant vegetative species present on each soil type; and

(b) a description of the disposal of bentonite cleanings, stray bentonite seams, and overburden that are unsuitable for plant growth. Such materials must be buried under at least three feet of material suitable for sustaining the postmining vegetation. (History: 82-4-422, MCA; IMP, 82-4-432, 82-4-434, MCA; NEW, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04.)

Rules 17.24.208 through 17.24.211 reserved

17.24.212 APPROVAL OR DISAPPROVAL OF AN APPLICATION FOR A PERMIT (1) Upon receipt of a permit application and within the time limits provided in 82-4-432(4), MCA, the department shall inspect the proposed site and evaluate the application to determine if the requirements of the Act and this subchapter will be satisfied. If the department is unable to evaluate a permit application because weather or other field conditions prevent an adequate site inspection, then the application must be disapproved.

(2) The department shall approve a permit application if it determines that:

(a) the application contains the following:

(i) \$50 application fee, if required;

(ii) a completed copy of the permit application form provided by the department;

(iii) plan of operation submitted on a form provided by the department;

(iv) bond or other security, if required;

(v) a completed copy of the landowner consent form; and

(vi) a completed copy of the zoning compliance form; and

(b) the application materials satisfy the requirements of the Act and this subchapter.

(3) Before approving an operator's permit application, the department shall submit a copy of the plan of operation, including map(s), to the state historic preservation office for evaluation of possible cultural resources in the proposed permit area. If the site is likely to contain significant cultural resources, the department may require that the operator sponsor a cultural resources survey by a competent professional authority prior to approving the application.

(4) A permit must provide that the operator shall comply with the requirements of the Act and this subchapter.

(5) A permit does not become operative until issued by the department, and an applicant may not begin opencut operations until a permit is issued. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, Eff. 2/5/76; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.213 AMENDMENT OF PERMITS (1) An operator may apply for an amendment to its permit by submitting an amendment application to the department. Upon receipt of an amendment application and within the time limits provided in 82-4-432(4), MCA, the department shall, if it determines that site inspection is necessary to adequately evaluate the application, inspect the proposed site and evaluate the application to determine if the requirements of the Act and this subchapter will be satisfied. If the department determines that a site inspection is necessary and it is unable to evaluate an application because weather or other field conditions prevent an adequate site inspection, the department shall disapprove the application.

(2) The department shall approve an amendment application if it determines that:

(a) the application contains a completed copy of the amendment application form provided by the department, additional bond if necessary, a new landowner consent form if required under ARM 17.24.206(1), a new zoning compliance form if required under ARM 17.24.223, and plan of operation revisions, if necessary; and

(b) the application and plan of operation revisions satisfy the requirements of the Act and this subchapter.

(3) An amendment does not become operative until approved by the department. Once approved, an amendment becomes part of the original permit.

(4) An amendment application does not require the payment of an additional fee. (History: 82-4-422, MCA; IMP, 82-4-432, 82-4-433, 82-4-434, 82-4-436, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.214 ANNUAL PROGRESS REPORT (1) An operator who possesses one or more permits shall submit one annual progress report for the previous calendar year to the department on or before March 1 of each year.

(2) The annual progress report must be submitted on a form provided by the department. In addition to the requirements in 82-4-403, MCA, the report must list all of the operator's permitted sites and provide the information required by the department for each of those sites. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-434, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.215 PENALTIES IS REPEALED (History: 82-4-422, MCA; IMP, 82-4-434, 82-4-435, 82-4-441, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; REP, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.216 GENERAL APPLICATION CONTENT AND PROCEDURES

(1) An application must contain the information required by 82-4-432, MCA, and ARM 17.24.217 through 17.24.219 and 17.24.221 through 17.24.223. Review of the application is conducted in accordance with 82-4-432, MCA, and (2).

(2) If, in its review, the department identifies additional information pursuant to ARM 17.24.218(3), 17.24.221(7), and 17.24.222(1) that must be submitted, the application is deficient until that information is submitted. The department shall notify the applicant of the additional information required through a deficiency notification, pursuant to 82-4-432(4), MCA.

(3) Application materials printed in color or larger than 11 x 17 inches must be submitted in duplicate, as required by the department. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-431, 82-4-432, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.217 PLAN OF OPERATION--PREMINE INFORMATION

(1) The plan of operation must include the following premine information:

(a) uses of natural and man-made surface water features in and within 500 feet of access roads and 1,000 feet of the main permit area. Surface water features include, but are not limited to, ephemeral, intermittent, and perennial streams, wetlands, ponds, springs, ditches, and impoundments;

(b) depths, water levels, and uses of water wells in and within 1,000 feet of the main permit area, and the information sources used, such as landowners, field observations, and water well logs. Available well logs must be submitted with the plan of operation;

(c) estimated ordinary high, ordinary, and ordinary low water table levels in the main permit area, and the information sources used, such as landowners, field observations, and water well logs;

(d) average soil and overburden thicknesses in the main permit area. At least three separate test hole locations must be used to measure these thicknesses. Places where the soil and overburden profile is exposed, such as roadcuts, may be used as test hole locations. Natural resources conservation service or other soil survey information may be used to supplement, but not replace, test hole information; and

(e) structures and residential areas that could be impacted by opencut operations. Examples of such areas and structures include, but are not limited to, inhabitable dwellings and commercial and industrial facilities. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.218 PLAN OF OPERATION--SITE PREPARATION, MINING, AND PROCESSING PLANS--AND PERFORMANCE STANDARDS (1) The plan of operation must include the following site preparation, mining, and processing plan commitments and information:

(a) an access road and main permit area boundary markers section, including a statement that the operator has clearly marked on the ground the access road segments to be improved or constructed and the main permit area boundary segments that require marking, and will maintain the markings as required by this rule. Road segments to be improved or constructed must be marked at every corner and along each segment so that the markers are easily visible with the naked eye from one to the next and no more than approximately 300 feet apart. Those portions of the boundary defined by definite topographic changes, natural barriers, or man-made structures, or located in active hayland or cropland, need not be marked. Other boundary segments must be marked at every corner and along each segment

so that the markers are easily visible with the naked eye from one to the next and no more than approximately 300 feet apart. Acceptable road and boundary markers include brightly colored, brightly painted, or brightly marked fenceposts, rocks, trees, and other durable objects. A boundary marker must remain functional until the beginning of final reclamation of the area next to that marker;

(b) an access road establishment, use, and reclamation section, including:

(i) a statement that the operator will appropriately establish, use, and reclaim access roads, and downsize to the premine condition or totally reclaim these roads by retrieving and properly handling surfacing materials; backfilling and grading road locations in a manner that leaves stable surfaces blended into the surrounding topography and drainageways; and ripping, resoiling, reconditioning, and seeding or planting the locations with the approved vegetative species, unless the landowner requests in writing that specific roads or portions thereof remain open and the department approves the request; and

(ii) a description of the access roads or portions thereof to be improved or constructed, including their locations, lengths, widths, drainageway crossings, and surfacing; and of the roads or portions thereof proposed to remain open, per landowner request, at the conclusion of opencut operations, including their locations, intended uses, and final widths. Some or all of this information may be presented on the site or area map. Improvements include, but are not limited to, blading, widening, and surfacing. A road or portion thereof may remain open for a reasonable postmining use and must be left in a condition suitable for that use;

(c) a mining, processing, and hauling section, including a description of the methods and equipment to be used to mine and process mine material, and to haul it and the products made from it. The department may require a description of the anticipated general mining progression, including where the first stripping and excavation will occur, the direction mining will progress, and other relevant information. The anticipated location and timing for the installation of facilities such as a screen, crusher, asphalt plant, wash plant, batch plant, pug mill, and other facilities may also be required;

(d) an hours of operation section, including a description of the proposed hours of operation. The department may reasonably limit hours to reduce adverse impacts on residential areas. A complete and accurate log that lists general on-site activities and the dates and times they occurred must be maintained for an opencut operation subject to restricted hours. Log information must be presented to the department upon request;

- (e) a water protection and management section, including:
 - (i) a statement that the operator will take appropriate measures to protect on- and off-site surface water and ground water from deterioration of water quality and quantity that could be caused by opencut operations; take appropriate measures to prevent, minimize, or mitigate adverse impacts to on- and off-site surface water and ground water systems and structures that could be caused by opencut operations; keep non-mobile equipment above the ordinary high water level of surface water and ground water; appropriately establish, use, and reclaim opencut-operation-related hydrologic systems and structures; install or construct fuel storage containment structures in accordance with the current codes adopted by the state fire marshal for each single-wall, non-mobile, fuel storage tank placed and used in and within 500 feet of access roads and 1,000 feet of the main permit area; routinely inspect and maintain these tanks to prevent leaks and spills; retrieve and discard spilled fuel and contaminated materials in a lawful manner; and report to the department a fuel spill that reaches state waters, as defined in 75-5-103, MCA, or that is greater than 25 gallons. The department may require on- and off-site surface water and ground water quality and quantity monitoring before, during, and after opencut operations. When opencut operations will cause the diversion, capture, or use of water, the operator shall consult with the regional office of the department of natural resources and conservation, water resources division, concerning water rights and submit a summary of that consultation with the plan of operation; and
 - (ii) a description of the source, quantity, storage, use, and discharge of water to be used for opencut operations; special measures to be used to protect on- and off-site surface water and ground water from deterioration of water quality and quantity; special measures to be used to prevent, minimize, or mitigate on- and off-site impacts on surface water and ground water systems and structures; water management and erosion control plans for surface disturbances that will intercept a drainageway, significant runoff, or ground water; measures to be used to protect the water rights of other parties or to replace an adversely affected water source that had a beneficial use; and fuel storage containment structures to be installed or constructed;
- (f) a mine material handling section, including:
 - (i) a statement that the operator will keep mine material stockpiles out of drainage bottoms and off of slopes greater than 3:1, and a statement that, at the conclusion of opencut operations, the operator will, except as provided in (ii) below, remove from the permit area or bury all excavated or processed

mine material, unless the landowner requests on the landowner consent form that specific types, grades, and quantities of mine material remain stockpiled; consolidate mine materials to remain stockpiled into piles of similar type and grade; and leave the quantity of soil that was stripped from the unreclaimed area under and around a mine material stockpile in a shaped and seeded pile within 100 feet of that stockpile. The operator remains liable for the unreclaimed area under and around a mine material stockpile until the mine material is removed and the site reclaimed, or ownership of the stockpile or possession of the permit is transferred to the landowner or another party; and

(ii) a description of the types, grades, and quantities of mine material proposed to remain stockpiled, per landowner request, at the conclusion of opencut operations, and justifications for the quantities based on current and expected demand for the materials. The department shall reject a landowner's request that certain mine materials remain stockpiled if adequate justification is not provided;

(g) a mined-area backfill section, including:

(i) a statement that the operator will use only clean fill from any source and on-site-generated asphaltic pavement as mined-area backfill; dispose of other wastes in compliance with applicable state laws and rules; bury on-site-generated asphaltic pavement, coarse clean fill, and other clean fill unsuitable for plant growth under at least three feet of material suitable for sustaining the postmining vegetation; and, at the conclusion of opencut operations, remove stockpiled asphaltic pavement, concrete with protruding metal, and clean fill from the permit area. Clean fill consists of dirt, sand, fines, gravel, oversize rock, and concrete with no protruding metal. On-site generated asphaltic pavement must be disposed of at least 25 feet above the ordinary high water table. The operator may propose that excess on-site-generated overburden and fines be disposed of at a site outside of the mined area but within the permit area. Fines consist of natural or crushed rock that is 1/4 inch or smaller; and

(ii) a description of the material types, estimated quantities, and fill designs for mined-area backfill, and of the plan for stockpiling and recycling imported asphaltic pavement and concrete;

(h) an additional impacts section, including a description of the methods and materials to be used to minimize impacts, as necessary, on the residential areas and structures identified under ARM 17.24.217(1)(e); repair or replace man-made structures affected by opencut operations within the permit area; and address other opencut operation impacts not addressed in other sections of the plan of operation; and

(i) an additional commitments section, including a statement that the operator will inform key personnel and subcontractors involved in opencut operations of the requirements of the plan of operation; take proper precautions to prevent wildfires; provide appropriate protection for cultural resources that could be affected by opencut operations and promptly notify the state historic preservation office should such resources be found; and submit an annual progress report to the department.

(2) Upon issuance of the permit, the operator shall comply with all commitments required by this rule and with the requirements for the conduct of operations contained in this rule. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.219 PLAN OF OPERATION--RECLAMATION PLAN--AND PERFORMANCE STANDARDS (1) The plan of operation must include the following site reclamation plan commitments and information:

(a) a postmining land uses section, including a description of the type, location, and size of each postmining land use area in the main permit area. Postmining land use types include, but are not limited to, water source pond, wetland, fish pond, riparian area, grassland, shrubland, woodland, special use pasture, hayland, cropland, wildlife habitat, livestock protection site, recreation site, and residential, commercial, and industrial building sites;

(b) a soil and overburden handling section, including:

(i) a statement that the operator will strip soil before other opencut operation disturbances occur; strip, stockpile, and replace soil separately from overburden; strip a minimum of six inches of soil, if available, from accessible facility-level areas; strip all soil from accessible mine-level areas; strip and retain enough overburden, if available, from mine-level areas so that up to an 18-inch thickness of overburden and soil can be replaced on dryland mine-level reclamation, and up to a 36-inch thickness of overburden and soil can be replaced on cropland and irrigated mine-level reclamation; maintain at least a 10-foot buffer stripped of soil and needed overburden along the edges of highwalls; haul soil and overburden directly to areas prepared for resoiling, or stockpile them and protect them from erosion, contamination, compaction, and unnecessary disturbance; at the first seasonal opportunity, shape and seed to an approved perennial species mix the soil and overburden stockpiles that will remain in place for more than two years; and keep all soil on site and accessible until the approved

postmining land uses are assured to the department's satisfaction. Only initial setup activities and soil stockpiling may occur on unstripped areas. The department may require that more than a six-inch thickness of soil be stripped from facility-level areas in order to protect soil quantity or quality for certain postmining land uses; and

- (ii) a description of the average thicknesses of overburden and soil to be replaced on mine-level areas. Resoiled surfaces must be seeded to a cover crop, or seeded or planted to the approved vegetative species, at the first seasonal opportunity after resoiling;

- (c) a surface cleanup and grading section, including:

- (i) a statement that the operator will retrieve and properly use, stockpile, or dispose of all refuse, surfacing, and spilled materials found on and along access roads and in the main permit area, and leave reclaimed surfaces in a stable condition and with 5:1 or flatter slopes for hayland and cropland, 4:1 or flatter slopes for sandy surfaces, and 3:1 or flatter slopes for other sites and surfaces; leave them graded to drain off-site or concentrate water in low areas; leave them at least three feet above the ordinary water table level for dryland reclamation and at approved depths below the ordinary water table level for pond reclamation; and blend them into the surrounding topography and drainageways. The applicant may propose the establishment of steeper slopes for certain postmining land uses and the construction of seasonal ponds. The department may require water-table-level monitoring to ensure that appropriate reclaimed surface elevations are established; and

- (ii) a description of the locations and designs for special reclamation features such as drainageways, ponds, and building sites. Reclaimed drainageways must be located in their approximate premine locations and have channel and floodplain dimensions and gradients that approximate premine conditions, unless otherwise approved by the department. Reclaimed drainageways must connect to undisturbed drainageways in a stable manner;

- (d) an overburden and soil reconditioning section, including a statement that the operator will alleviate overburden and soil compaction by deep tilling replaced overburden, graded surfaces, and other compacted surfaces to a depth of at least 12 inches before resoiling, and by deep tilling through the soil and into the surface of the underlying material after resoiling. Deep tillage must be done on the contour and when the overburden and soil are dry enough to shatter. Deep tilled areas must be protected from recompaction. Deep tillage is not required for relatively non-compactible

materials such as sands, materials with a rock fragment content of 35% or more by volume, and bedrock. Tilling deeper than the soil thickness is not required when cobbly material or bedrock underlies the soil;

(e) a revegetation section, including:

(i) a statement that the operator will establish vegetation capable of sustaining the designated postmining land uses; ensure that areas seeded or planted to perennial species will be appropriately protected and managed from the time of seeding or planting through two growing seasons or until the vegetation is established, whichever is longer; use seed that is as weed free as is reasonably possible; and comply with the noxious weed control plan approved by the respective weed district for the opencut operation. Revegetation success on a non-cropland area is achieved when vegetation capable of sustaining the designated postmining land use has established. Revegetation success on a cropland area is achieved when a crop has been harvested from the entire area and the yield is comparable to those of crops grown on similar sites under similar growing conditions. A copy of the approved noxious weed control plan must be submitted with the plan of operation; and

(ii) a description of the types and rates of fertilizer and other soil amendment applications; methods of seedbed preparation; and methods, species, and rates of seeding or planting. When the postmining land use is hayland or cropland, the soil surface must be left free of rocks that could impede agricultural equipment. Seedbed preparation and drill seeding must be done on the contour. Broadcast seeding must be done at rates at least 100% higher than drill seeding rates and the surface dragged or pressed to cover the seed. Seeding rates must be given as pounds of pure live seed per acre. Seeding must occur during the late fall or early spring seeding seasons. Cover crop seeding and mulch application may be needed to help stabilize an area or establish vegetation;

(f) a reclamation timeframes section, including:

(i) a statement that the operator will complete all reclamation work on an area no longer needed for opencut operations, or that the operator no longer has the right to use for opencut operations, within one year after the cessation of such operations or termination of such right. If it is not practical for the operator to reclaim a certain area until other areas are also available for reclamation, the operator may propose an alternate reclamation deadline for that area; and

(ii) a reasonable estimate of the month and year by which final reclamation will be completed considering the estimated mine material demand, expected rate of production, and accessible mine material reserves. Final reclamation must be completed by the date given.

(2) Upon issuance of the permit, the operator shall comply with all commitments required by this rule and with the requirements for the conduct of operations contained in this rule. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.220 PLAN OF OPERATION--RECLAMATION BOND CALCULATION

(1) A proposed reclamation bond calculation must be submitted as part of the plan of operation. The bond amount must be based on a reasonable estimate of what it would cost the department to reclaim, in accordance with the plan of operation, the anticipated maximum disturbance during the life of the opencut operation, including equipment mobilization and administrative costs. The department shall review the proposed bond calculation and make a final determination.

(2) Federal agencies, the state of Montana, counties, cities and towns are exempt from bond requirements. (History: 82-4-422, MCA; IMP, 82-4-405, 82-4-431, 82-4-432, 82-4-433, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.221 PLAN OF OPERATION--MAPS

(1) A site map at a scale of 400 feet to one inch or larger and on a topographic map or air photo base must be submitted as part of the plan of operation. A smaller scale area map drawn on a topographic map or air photo base may also be submitted as part of the plan.

(2) The following existing and proposed main permit area features must be shown and labeled on the site map:

- (a) main permit area boundary;
- (b) staging, processing facility, and mining areas;
- (c) soil, overburden, and mine material stockpile areas;
- (d) mined-area backfill and excess overburden and fines disposal sites;
- (e) soil and overburden test hole locations;
- (f) water system and control structure locations; and
- (g) sight and sound barrier locations.

(3) The locations of existing and proposed access roads must be shown and labeled on the site or an area map.

(4) The following existing features in and within 500 feet of access roads and 1,000 feet of the main permit area must be shown and labeled on the site or an area map:

- (a) premine land uses including, but not limited to:
 - (i) water source pond;
 - (ii) wetland;
 - (iii) fish pond;
 - (iv) riparian area;

- (v) grassland;
 - (vi) shrubland;
 - (vii) woodland;
 - (viii) special use pasture;
 - (ix) hayland;
 - (x) cropland;
 - (xi) wildlife habitat;
 - (xii) livestock protection site;
 - (xiii) recreation site; and
 - (xiv) residential, commercial, and industrial sites;
 - (b) reclaimed and unreclaimed surface disturbances;
 - (c) surface water features, as described in ARM 17.24.217(1)(a);
 - (d) vegetative types including, but not limited to:
 - (i) wetland;
 - (ii) riparian;
 - (iii) grassland;
 - (iv) shrubland;
 - (v) woodland;
 - (vi) special use pasture;
 - (vii) hayland; and
 - (viii) cropland;
 - (e) fish and wildlife habitats of special concern, including, but not limited to:
 - (i) lakes;
 - (ii) ponds;
 - (iii) streams;
 - (iv) wetlands;
 - (v) riparian areas;
 - (vi) unique cover areas;
 - (vii) travel lanes;
 - (viii) migration routes;
 - (ix) raptor cliff and nest areas; and
 - (x) reproductive, nursery, and wintering areas;
 - (f) residential areas and structures that could be impacted by opencut operations, as described in ARM 17.24.217(1)(e); and
 - (g) non-access roads, fences, utilities, and buffer zones.
- (5) The locations of existing and proposed water wells in and within 1,000 feet of the main permit area must be shown and labeled on the site or an area map.
- (6) The operator name, site name, legal description, scale, date of drafting, and north arrow must be shown on all plan of operation maps.

(7) Complete and accurate maps must be submitted. The department may require that part or all of the area in and within 500 feet of access roads and 1,000 feet of the main permit area be surveyed to provide sufficient map detail and accuracy. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.222 PLAN OF OPERATION--ADDITIONAL INFORMATION AND CERTIFICATION (1) The department may require that an operator provide additional plan of operation information, including, but not limited to:

- (a) vegetation;
- (b) soil;
- (c) surface water;
- (d) ground water; and
- (e) fish and wildlife surveys and assessments.

(2) The information provided pursuant to (1)(a) through (e) must be gathered, analyzed, and presented according to current professionally accepted practices. Field data must be accompanied by the names and addresses of the parties that collected and analyzed the data, and by a description of the methodologies used to gather and analyze the data.

(3) The plan of operation must conclude with a statement signed and dated by the operator certifying that the statements, descriptions, and information provided apply to the proposed permit area, applicable adjacent areas, and proposed opencut operations, and that the requirements of the plan of operation will be followed unless officially amended through the department. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, 82-4-436, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.223 ZONING COMPLIANCE FOR SAND OR GRAVEL MINING

(1) In order to ensure that a proposed sand or gravel operation will be in compliance with local zoning regulations, permit applications for sand or gravel operations and amendment applications for sand or gravel operations that add acreage or change the postmining land use must include a statement from the appropriate local governing body certifying that the proposed mine site and plan of operation comply with local zoning regulations. No application for a permit or such amendment to mine sand or gravel may be approved by the department unless accompanied by such a statement submitted on a form provided by the department. (History: 82-4-422, MCA; IMP, 82-4-431, 82-4-432, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.224 ASSIGNMENT OF PERMITS (1) A person may assume a permit from an operator by submitting an assignment application to the department. Upon receipt of an assignment application, the department shall inspect the permitted site, if necessary, and evaluate the application and existing permit to determine if the requirements of the Act and this subchapter will be satisfied.

(2) The department shall approve an assignment application if it determines that:

(a) the application contains completed copies of the application for assignment and assignment forms provided by the department, and necessary revisions to the permit. The application for assignment form shall include a statement that the applicant assumes responsibility for outstanding permit and site issues;

(b) the application materials and necessary revisions to the permit satisfy the requirements of the Act and this subchapter; and

(c) adequate bond has been submitted. To be adequate, the bond must meet the requirements of ARM 17.24.220 and must include the cost to the department of reclaiming all previously disturbed lands within the permit area.

(3) An assignment does not become effective until approved by the department. The assignee must ensure that it has a complete copy of the approved permit and assignment materials. The assignee is responsible for complying with all terms of the permit, including all provisions of the plan of operation.

(4) An assignment application does not require the payment of an additional fee. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-432, 82-4-433, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.225 PERMIT COMPLIANCE (1) An operator shall comply with the provisions of its permit, this subchapter, and the Act. The department may issue an order requiring abatement of a violation within a reasonable time. The applicant may request an extension of the deadline, giving the reason the extension is necessary, and the department may grant the extension upon finding that good cause for the extension has been shown. The permittee shall comply with the abatement order within the time set in the order or extension.

(2) A permittee may allow another person to mine and process mine materials at the permitted operator's site, only if the permittee retains control over that person's activities and ensures that no violations of the Act, this subchapter, or the permit occur. If the person violates the provisions of the Act, this subchapter, or the permit, the permittee is responsible for the violation, and the department may require abatement pursuant to (1).

(3) A person who conducts opencut operations at a nonpermitted site and who was obligated to obtain a permit is in violation of 82-4-431, MCA, and the department may issue an order requiring cessation of the operation and may also order abatement of the violation, including reclamation of the site, within a reasonable time. The person may request an extension of the deadline, giving reasons why the extension is necessary, and the department may grant extensions upon a finding that good cause for the extension has been shown. The person shall comply with the abatement order within the time required by the order or extension. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04.)

